IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3435 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJESHBHAI RAMBHAI PARANTE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3435 of 2001

MRS PREMLATA B KADAM for Petitioner No. 1

MR HL JANI, Learned AGP for Respondent No. 1-2,4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/07/2001

ORAL JUDGEMENT

1. Heard Ms.P.B. Kadam, learned advocate for the petitioner, Mr.H.L.Jani, learned AGP for the respondent Nos.1, 2 and 4 and Ms.P.J.Davawala, learned advocate for

the respondent No.3. The respondent No.2 has filed an affidvit-in-reply and respondent No.4 has not filed an affdavit-in-reply.

2. In the present petition, under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 30/3/2001 passed by the Detaining Authority. The petitioner has been detained at Himmatnagar Jail as a Class-II detenu. The ground of detention has been communicated under Section 8(1) of the Prevention of Black Marketing and Maintenance of Essential Commodities Act, 1980 (hereinafter referred to as the Act).

3. Ms.P.B.Kadam, learned advocate for the petitioner has challenged the order of detention on various grounds. But according to her submission one or two contentions are enough to vitiate the order of detention. Ms.Kadam has also submitted that along with the ground of detention, the documents which have been supplied to the petitioner at Sr.Nos.68, 69, 79, 80, 83, 96, 112, 117, 121, 150, 158 and 170 are not legible. Ms.Kadam has also submitted that the petitioner has no knowledge about the Hindi language, his mother tongue is Gujarati and the document which has been supplied to the petitioner at Sr.No.112 is in Hindi and, therefore, the order of detention is required to be set aside. The third contention which has been raised by the petitioner is to the effect that the petitioner is an employee of one Sunilbhai Jain against whom the detention order has been passed by the detaining authority and he has also challenged the detention order before this Hon'ble Court in Special Civil Application No.3424 of 2001 and this Court has set aside the order of detention by order dated 21/6/2001 in favour of his employer Sunilbhai Jain and, therefore, the petitioner is entitled to the same benefit because he is an employee which is undisputed fact and Sunilbhai Jain is an employer of the present petitioner. Therefore, the order of detention passed by the detaining authority against the present petitioner is also required to be quashed and set aside.

4. Mr.H.L.Jani, learned advocate for the respondent Nos.1, 2 and 4 has submitted that the order of detention has rightly been passed by the detaining authority on 30/3/2001. Considering the relevant provisions of Section 3(1) of the Act and being in employment, the present petitioner is helping to his employer in illegal activities and, therefore, he is responsible for illegal activities which have been carried out by his employer. Mr.Jani has also submitted that looking to the facts and

circumstances and material which are placed on record, it is crystal clear that there was compelling circumstances to pass the order of detention, otherwise the petitioner would definitely carry out the illegal activities in absence of employment which adversely affect the society. Therefore, according to him, the order of detention is legal and valid. Mr.Jani has also submitted that the petitioner himself is aware about the Gujarati language, but some documents are in Hindi language, the same are not relevant, but it relate to Sunilbhai Jain who was at relevant time out of station. This fact is known to the petitioner and the same fact has been disclosed by the petitioner before the concerned authority. Therefore, according to him, supplying the documents to the petitioner in Hindi language cannot vitiate the order of detention. Mr.Jani has also submitted that in absence of demand, the order of detention cannot be vitiated. Mr.Jani has also submitted that in such circumstances, no interference is required by this Court.

5. Ms.P.J.Davawala, learned advocate for the respondent No.3 has submitted that the affidavit-in-reply has been filed by the concerned authority and looking to the facts and circumstances and material on record, the order of detention has been passed by the detaining authority. Ms.Davawala has also supported the submissions of Mr.Jani, learned AGP for the respondent Nos.1, 2 and 4. Ms.Davawala has also submitted that in such circumstances, no interference is required by this Court.

6. I have considered the submissions of learned advocates for respective parties. However, the fact remains that the documents which have been supplied along with the ground of detention to the petitioner are not legible and the documents at page Nos.112 to 116 are in Hindi language. Not to supply the legible documents and not to supply the documents, if any, in the language known to the petitioner or detenu, will adversely effect the legal right of the detenu of making effective representation under Article 22(5) of the Constitution of India. I have perused the records and also ground of detention as well as relevant documents which are on record. It is necessary to note that the documents on which the petitioner has relied upon, the some documents are legible and some are not legible at all and documents at page Nos.112 to 116, which are in Hindi language, have not been supplied in Gujarati language. In light of these facts, the relevant observations made by the Division Bench of this Court in Special Civil Application No.1476 of 1997 decided on 27/12/1993 are as under :-

"Elaborating the factual aspect before us, the learned counsel Ms.Kachhavah would urge that as a matter of fact the detaining authority has placed reliance upon the bail application presented by the petitioner detenu before the learned Chief Judicial Magistrates, Bharuch, in respect of Crime Register No.688/92, and acting on the very same petition the petitioner detenu later on came to be released on appropriate bail by the learned Chief Judicial Magistrate. The bail application submitted by the petitioner detenu is in Gujarati language and script. Any how the orders enlarging the petitioner detenu on bail are in English language & script. In view of this factual background there is a contention coming from the learned counsel for the petitioner that the translated version of the above said orders which appear in English language & script has not been ourselves in petitioner presents the entire bunch of the documents which was furnished to the petitioner detenu and pin points the bail application before the learned Chief Judicial Magistrates, Bharuch which is in Gujarati language & script. Any how the orders therein are in English language and script. On verification it appears that though the above said part is in a language not known to the petitioner, the translated version of the portion of the orders in English language & script has not been furnished to the petitioner detenu. In view of this factual data demonstrated before us, we are of the opinion that there is a clear non communication vis-a-vis the orders in English language Magistrate. it is not in dispute that there is the document on which the authority passing the orders has placed reliance. This becomes evidently clear from the grounds of detention itself. Once this factual aspect is accepted the legal consequences are well known. We can say without any hesitation whatsoever that there has been a non communication in respect of this material which is in the English language & script on which the detaining authority has placed reliance. This non-communication would definitely impair the constitutional right guaranteed to the petitioner under Article 22(5) of the Constitution of India to make an effective representation. this guarantee clearly appears to have been violated. We therefore, feel obligated to allow this petition and to quash and

set aside the orders of detention. We accordingly do so. The orders of detention are hereby set aside and quashed. We direct the respondents to release the petitioner from the detention forthwith, if not required in any other criminal case or proceedings. Rule made absolute accordingly."

Moreover the Apex Court in the case of Lallubhai Jogibhai Patel v/s. Union of India, reported in AIR 1981 SC 728 has observed as under :-

"Where the materials not supplied to the detenu were evidently a part of those materials which had influenced the mind of the detaining authority in passing the order of detention, and the representation made by the detenu and forwarded to the Central Government at his instance was not disposed of for a long time and the grounds of detention in English language were forwarded to him though he did not know English, continuation of his detention was illegal.

Art.22(5) of the Constitution of India requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. it means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the "ground" to the detenu is to enable him to make a purposeful and effective representation. If the "grounds" are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that mandate in Article 22(5) is infringed"

7. It is also necessary to note two decisions of the Division Bench of this Court; one is in the case of Govind Changumal Sindhi v/s. Commissioner of Police & Others, reported in 1990 (1) G.L.H. 504. The relevant para-(5) of the aforesaid judgment is quoted as under :-

"5. It would certainly be a different case if a person is totally illiterate. In such cases explanation of the grounds and material relied upon by the detaining authority in respect of the order of detention in the language which the detenu understands would be certainly sufficient

compliance with the constitutional provisions and the relevant provisions of PASA. But in cases where the detenu is in a position to read and write a particular language, then in such cases, he is required to be furnished the grounds and other material relied upon by the detaining in the language which he knows and understands. Therefore, the contention of the learned counsel for the respondents that this decision may create difficulty in the way of the authorities whenever a person to be detained is totally illiterate cannot be accepted. In this view of the matter the continued detention of the petitioner cannot be upheld."

The second decision is in the case of Vikramsinh Pravinsinh v/s. State of Gujarat and Another, reported in 1988 (2) G.L.H. 414. The relevant para-(3) of the judgment is quoted as under :-

"3. The petitioners have contended that they have been supplied the copy of the judgment delivered by the Court of Sessions, Amreli in Sessions Case No.40 of 1985 but some of the pages of the said judgment are not legible at all and, therefore, that amounts to non-communication of the grounds and that also adversely affected the right of the petitioners' making representations to the concerned authorities. In the affidavit-in-reply, the District Magistrate has stated that the copies are legible. We have ourselves looked into the copies of the judgment supplied to the detenu and we find that some of the pages are not legible at all. For example, pages 16 and 42 of the said judgment are not legible. When some of the pages of the judgment are not legible, that amounts to non-communication of the grounds and, therefore, the orders of detention and the continued detention are both vitiated. it is difficult to accept the submission of Mr.G.D.Bhatt, the learned Additional Public Prosecutor that Section 6 of the PASA Act can be pressed into service and the orders of detention can be sustained on other grounds. We find it difficult to agree with Mr.Bhatt that Section 6 of the PASA Act can be pressed into service in a case like the present one. Section 6 of the PASA Act comes into play only when the grounds are communicated but one or more of the grounds are found to be vague, non-existent etc. When there is

non-communication of some of the grounds to the detenu, the question of invoking of the provisions of Section 6 of the PASA Act does not arise. When some of the grounds are not communicated there is violation of Article 22(5) of the Constitution of India and, therefore, the detention becomes unconstitutional. We are supported with the view which we are inclined to take by the decision of the Division Bench of this Court rendered in Special Criminal Application No.186 of 1987 (Coram : D.H.Shukla & P.H.Chauhan,JJ.) on 5-8-1987. In that case also it was a question of non-communication of the grounds and the submission made on behalf of the State based on Section 6 of the PASA Act was rejected. The Division Bench of this Court referred to a judgment of the Division bench of the Bombay High Court in the case of Chandra Shekhar Ojha v. A.K.Karnik and Others reported in 1982 Cri.L.J. 1642 where such a contention was raised on behalf of the state and rejected. The Division bench of the Bombay High Court in that case relied upon the decision of the Supreme Court in the case of Kamla Kanhaiyalal Khushalani v. State of Maharastra reported in A.I.R. 1981 Supreme Court 814 when the Supreme Court held that the documents and the material relied upon in the order of detention form an integral part of the grounds and must be supplied to the detenu pari passu the grounds of detention and if the documents and material are even supplied late, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. The Bombay High Court observed that before the order of detention can be supported the constitutional safeguards must be strictly observed. In the case of Bhupinder Singh v. Union of India and Other (1987) 2, Supreme Court Cases 234 the detention was set aside on the ground that the right of making representation guaranteed under Article 22 of the Constitution of India was denied."

8. In light of the aforesaid observation of the Apex Court as well as the Division Bench of this Court and looking to the facts of the present case, and further looking to the undisputed fact that the copy of the certain documents at page Nos.112 to 116 are in Hindi language and the petitioner was not aware about the Hindi language and the documents have been supplied to the petitioner in Hindi language and not supplied in Gujarati

language and some documents are not legible at all, it is clear that it has adversely affected the legal rights of the petitioner for making an effective representation and it violated the mandate of Article 22(5) of the Constitution of India.

9. It is also necessary to note that the employer of the present petitioner, Sunilbhai Jain, against whom the detention order has been passed on the basis of the same facts by the detaining authority, has challenged the detention order in Special Civil Application No.3424 of 2001, wherein this Court has set aside the order of detention by order dated 21/6/2001. Therefore, considering these aspects, according to my opinion, in the present case also the detention order is required to be set aside.

10. For the aforesaid reasons the petition succeeds and the same is allowed. The order of detention dated 30/3/2001 is vitiated and resulted in quashing and setting aside the same. The detenu Rajeshbhai Rambhai Parante, who has been detained at Himmatnagar Jail, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

[H.K.RATHOD,J.]

(VRPanchal)**